

City of Columbus
Public Hearing (Continued) – 6550 145th Avenue Variance Request (PC-17-118)
August 16, 2017

The August 16, 2017 continued Public Hearing to receive testimony considering a request for two variances from the required Sec. 7A-800 (C)(6)(b) that except where alternative agreements are approved by the City Council, all owners shall covenant to maintain a driveway (consistent with certain standards) and Sec. 7A-800 (C)(6)(c) that all owners of properties abutting by the driveway enter into a development agreement with the City, including but not limited to minimum provisions of granting a 66-foot wide right of way easement and public drainage, utility and trail easements over the driveway to the public, as determined by the City Council for the construction of a new home was called to order at 7:03 p.m. by Chair Garth Sternberg at the City Hall. Present were Commission members Jim Watson, Pam Wolowski, Jesse Preiner and Jody Krebs; City Administrator Elizabeth Mursko, Planner Dean Johnson, City Attorney Jacob Steen, and Recording Secretary Karen Boland.

Also in attendance were City Council members Denny Peterson and Bill Krebs; Haila Maize, Vince Stevens, Jim Hoffman, Pam Olson, and Ted Flohrs.

Sternberg: Now we're going to have a continued public hearing and discussion for 6550 145th Avenue variance request, packets, pages 1 through 75 and enclosure. And this hearing is still open, so, do we allow folks to come forward and present more?

Steen: Mr. Chair, uh, the hearing is still open, so, individuals, members of the public, do have the opportunity to speak if they would like. I do have, uh, I did prepare a brief memorandum for the Planning Commission, and I can go through that quickly and, and provide a background before--

Sternberg: Sure.

Steen: --uh, we open it up again. So, as you know, the hearing is still open. I just wanted to run through the history again and, and just clarify the issues. Uh, this is the, the applicant, Ms. Olson, has applied for a variance to some provisions, uh, regarding driveway access. The property right now, would, as proposed, would be subdivided into two separate approximately-ten-acre parcels. That's currently accessed solely by an easement over Mr. Hoffman's property. The easement is, uh, does stipulate that Olson is required to maintain and construct the driveway. So that is a condition that's already in effect by the agreement. And, also, Olson can dedicate that at a future date to the government, whether it's the City or some other entity. There is also an issue of an existing subdivision agreement. When the property was originally subdivided there is a provision that prohibits future subdivision of the Olson parcel. So, even if this variance is approved, the City Council will have to either terminate or amend that agreement. So, there will be a subsequent step at that point, likely, along with the plat application. So, it's a little more complicated than a typical variance request, because there's some specific conditions—minimum conditions—of approval that were put into place when a, uh, a property is using a driveway as its primary street frontage. So, in general, a subdivision requires street frontage. We do have a

provision, uh, that so long as certain measures are met, uh, you can use that driveway for up to two lots. And, those minimum provisions are the provisions that the applicant is requesting relief from. And I do have some recommended findings for the variance, both in support of the variance, and for denial. These are just recommendations, a template for you to use. If you'd like to make revisions, you certainly can. There's also some recommended conditions of approval if you do recommend approval to the Council.

Sternberg: So, would the app, applicants have any more to add?

Thieroff: Yes. Thank you Mr. Chair.

Sternberg: If you could just state your name and address for the record. Just for the record.

Thieroff: Certainly. My name is Mark Thieroff. I represent Ms. Olson. My address is 100 Washington Avenue South, uh, Minneapolis.

Sternberg: Thank, thank you.

Thieroff: I appreciate the chance to speak with you this night. You may recall that the, at the initial public hearing, uh, we were about to be meeting with the watershed district on some wetland issues, and had requested the opportunity to talk to you after that meeting, just in case that impacted the application. It turned out it didn't. In any event, we do appreciate you keeping the record open for us to do this this evening. Uh, we were here when, uh, Mr. Hoffman and some of the other neighbors addressed you that evening. And so, just want to take a few minutes tonight to kind of clarify a couple of the points that were made to you that evening, uh, that I think were inaccurate and that might help you understand the issues more fully. Um, I've got a couple of maps or diagrams. Elizabeth asked me to bring copies, so she's got those there for you. It's not always so easy to see, I guess, on the document camera. It's, in many respects, an unusual property or a unique property. Ms. Olson's property is, uh, 6550—you see that at the southern, to the southwest of the end of 145th Avenue (referring to overhead). Um, Elizabeth can I . . . ? (unintelligible). Uh, so this, of course, is Ms. Olson's 20-acre parcel. Above her, to the north, is Mr. Hoffman's place. You have Mr. Lafond over here; he spoke with you at the last meeting. And then, Mr. Flohrs lives here. This is 145th Avenue, which ends there. And, you can't see on the map, but the 33 feet—eastern 33 feet of Mr. Hoffman's property, is an easement that was granted by his predecessor to Ms. Olson's predecessor. That's a recorded easement, uh, that provides access to the entire 20-acre parcel. So, that's important. That's been in place for 20 or 30 years, and it provides ingress and egress and utilities to the entire 20-acre parcel. Also, I want to point out that to the west of the property you have the wildlife management area. To the south you have other public-owned land. To the north, of course, is Mr. Hoffman's property. And to the east, uh, the westernmost, uh,--I can't remember now if it's 66 feet or 100 feet—is a pipeline. The pipeline actually goes the entire length here. So, it's, when you're thinking about possibilities for further development here or future development or, you know, someone coming along and developing further in any one of these directions, it would seem either impossible or at least, highly unlikely, that you're going to see any further development here. And the other factor that I want to point out is, if you look at your maps, you'll see a light spot there. That is the only

upland in the western half of this property. That's where Ms. Olson's brother would build his house if the approvals are granted. And, it's really the only place in that 10-acre parcel where you have enough upland to even build a house. So, there's been talk about, 'Well, we're here today asking you for permission to build another house, and what about next year when we come and ask to build two more?' And this slippery-slope type thing. It's really impossible. There's nowhere to go in any direction. And the only upland is, uh, sufficient for one house only. Uh, just a little bit about the easement, um, the easement is 33-feet wide, and at the time that Ms. Olson's predecessor got permission to build a house on that 20-acre parcel, you had to have frontage on a public road, as you do today. And when Mr. Hoffman's predecessor granted that 33-foot easement, that 33 feet of frontage on 145th was deemed by the Township at the time as sufficient frontage on a public road. So that was how that problem was solved back then. You've heard that there was a development agreement that was put into place that talked about whether the property could be further subdivided, and, and how that would happen and so forth. That's a private contract between the City and Ms. Olson, and we do understand that for this project to go forward, that contract will have to be amended, and we'll be pursuing that, uh, with the City Council. So, I want to talk now a little bit more, in detail, about what exactly Ms. Olson wants to do. Um, if you look at the second page of the little handout . . . let's see . . . Does this zoom?

Mursko: It does. On the left side there, where it says telegraph. And then it goes wide.

Thieroff: Ah, great. Yup. Okay. Um, obviously the goal is to get access to this building site back here. And, the engineers looked at a variety of different approaches to doing that. You see, labelled on this map, Alternative Three and Alternative Two, and those are the two that I'm going to talk to you about this evening. There was an Alternative One that was looked at, I believe at the request of the watershed district, because, as you're, I'm sure, all very familiar with, you have to look at all possibilities for avoiding wetlands. So that One actually came down all the way around the property, like that. And that was deemed to require far too much wetland fill to be viable. So, that, that alternative was taken off the table. We're left with Alternative Two and Alternative Three. They're drawn on here as 66 feet wide. That was just done for the purposes of kind of a planning exercise. The driveway that would be built would be 16 feet wide, pursuant to ordinance requirements. Um, the, the problem with alternative three, and the reason why we've concluded it's not, it's not a possibility for Ms. Olson, is that, if you look closely, -- you can't really see it too well on the screen—but, in this area right here, you've got a, a threatened or rare plant community that was identified by the wildlife consultant who Ms. Olson was required to hire and have study the plant life on the property. Um, you've also got an area that was identified by the consultant here, of hawk—I can't remember if it was roosting or nesting. But there was apparently a key tree used by raptors that was located here. So, with these two items here, and then, when you see over here, you've got the amount of fill necessary, you see that Alternative Three requires slightly more fill than Two. Those factors together made us conclude that a route going through this corridor here, labelled Alternative Two, uh, was the, the preferable approach. Um, now we understand Mr. Hoffman would like to see this—well, he doesn't want it to happen at all—but, his concern is that it's close to his property. So, we've looked at constructing the driveway as far to the south of this area—so, along the line down here—as we can, which would get it as far as possible away from his house. I've actually provided for you the dimensions or the measurements to his house. If you look at the next page

in your packet, you'll see that it's just under a hundred feet from the nearest corner of his house to the property line, and then it would be another 50 feet to the northern edge of the driveway. So, you're just under 150 feet from his house. Um, it doesn't show up too well, on the aerials you might see it, but on your packet, but there is a tree line on the border, and then everything on Ms. Olson's property is still quite wooded, and she's, uh, she's more than willing to maintain and preserve all the trees that are currently on her property between the boundary line and where the driveway would go. So, you've got the tree line that Mr. Hoffman's installed, and then you've got an area of 50 feet wide that's quite densely covered with, with trees and other brush and so forth, and that would stay, providing a natural buffer between these properties. Um, for comparison, on the last page of the packet, you've got the measurement of Mr. Hoffman's house to the property line to the east. Keeping in mind that the easement is 33 feet wide. If you subtract 33 feet from 111. Uh, you get that it's 78 feet from his house to the nearest point of the driveway going through the easement area. And, again, it's hard to see, but he also has a treeline going the whole length of the edge of the easement area. His driveway is here, and the easement area is there. So just in terms of why we believe the variance should be granted, and would be a reasonable outcome here, first of all, we've got these very unusual circumstances in terms of the property having this pipeline easement down the side, there's no room to actually create a road through there. Um, the second ten-acre lot is a reasonable use for the property; it's far in excess of the minimum lot size in your city for a residential use, and it's quite common to divide a 20-acre parcel into two to have two buildable lots. Um, the pipeline as well as the lack of control that Ms. Hoffman has over—excuse me--Ms. Olson has over the driveway area makes it impossible for her to comply with these conditions as far as entering into agreements with the other two neighbors are concerned. And you might ask yourselves, 'Well, why should we deviate from a requirement like that when that requirement may be there to protect those property owners.' What they're getting in your ordinance is a commitment to maintenance. And Ms. Olson already has a legal obligation to maintain that driveway pursuant to the terms of the recorded driveway easement. Uh, if she were to fail to carry out that obligation, Mr. Hoffman could seek to terminate that easement. So, it's something that you take seriously, and it's in place, so we don't need an extra agreement between Ms. Olson and these neighbors for the maintenance of this driveway, because it's already legally required. I think we should also be concerned about creating a situation where one private property owner is able to exercise veto control over how another private property owner wishes to use her property in a legal manner. We feel here that there's a risk of that, simply to the extent that we've just been told, 'No.' There's been no discussion, no negotiation, nothing. They just simply will not agree to do it. And we feel that that's granting them far too much control over Ms. Olson's property. Just a couple of points that were made in, uh, the letter that you got from Mr. Hoffman's attorney that I wanted to respond to. Um, a couple of them I think were just points of confusion. One says that if the variance was granted there would be two driveways in the easement area. Well, you don't need to see it again. But, that's obviously not true. It would be the same driveway that crosses Mr. Hoffman's property would be used by the occupant of the new lot, as it's always been used by the occupant of Ms. Olson's property. It's the existing driveway; nothing would change. Um, it's on the second one it's going to be built in the same driveway, through that 33-foot corridor. Um, there's also been an argument that the City would be somehow trying to alter the easement if it granted this variance, somehow interfering in this private relationship between the parties regarding the driveway easement. Nothing that we have asked the City to do would expand or

otherwise change Ms. Olson's rights under that easement. That easement says it's for ingress and egress to all of her 20-acre parcel. And that's, uh, been the situation up until now, and that would continue. We're not asking for anything more than that. Mr. Hoffman may take the position that having a second residence there expands the scope of that easement, and he may argue that that's not legal under the terms of the easement, but that's a private legal dispute, and, if he chooses to litigate that, that's, he's entitled to do that. But that doesn't affect, either way, what we're asking the City to do here. Um, it's also been kind of an argument that this has upended his expectations. He, he bought this property with certain expectations and he feels that granting this variance would change what he was led to believe the situation would be. Um, that argument actually cuts heavily against Mr. Hoffman. We need to think about what he knew or should have known when he bought his property based on recorded records. He would have known that this driveway could have been made a public road at any time. That was called for in the recorded easement document. He would have known that a public road could have been put in that would have more traffic than the traffic to this single property that exists now. He also would have known that if it became a public road he'd be responsible for assessments; that's also set forth in the easement document. No talk of assessments here and no one's asking him to pay anything. But that's always been a possibility and something that he bargained for when he bought that property. Um, finally, he knew or should have known that the development agreement was not something that he can rely on. That's a private contract between the City and Ms. Olson. And he has no control over that; he's not a party to that contract, and it would have been reasonable for him to conclude that that could have been amended at any time. So, there really isn't anything for him to rely on here, and, if he didn't want to live on a property that's subject to a driveway easement, his alternative would have been to purchase a different property. Finally, there's been kind of a bare assertion that granting this variance would negatively affect his property values. There's certainly nothing in the record to support that, no evidence of any indication that that would occur. If we were to develop this property for a second ten-acre lot, which is standard and customary in this community, I think it's highly doubtful that that would have any impact on the property values. This driveway is quite far from his house. It's separated by dense foliage—I understand some of you have been out to the property and have seen that. And that his property is hardly visible—if at all—from this driveway. So, unless you have any questions for me, those were the comments I wanted to share with you.

Watson: Mr. Chair. Um, first of all, thank you, Mrs. Olson, for allowing member Krebs and myself to come out this weekend and take a look around. That point in time we had this map with us. This map shows a different driveway access than what you presented tonight.

Thieroff: I'm glad you've asked about that; I intended to address that and I apologize. Um, that—oh, I'm sorry—did you have more to your question?

Watson: No, that'd be the first one, if you don't mind.

Thieroff: Not at all. The engineer prepared that for the plat approval process that started a while ago, before Ms. Olson concluded that she was going to seek a variance for a driveway rather than putting a road in there. And so that depicts a division of these properties, and it depicts an actual right-of-way being put in there, with a cul de sac. That's not the plan anymore. That was offered

for purposes of just kind of showing you the lay of the land. But, what would happen here is that there would be an easement granted by Ms. Olson to her brother as the owner of the second property to travel across her property, and it would not involve that type of built-out right-of-way with a cul de sac.

Watson: In our conversation over the weekend, uh, part of the sell was moving the road to the south, providing a better or more screening for Mr. Hoffman.

Thieroff: Correct.

Watson: So that's, what you're saying is, that's gone away.

Thieroff: Oh, no.

Watson: No longer the case.

Olson: Not that part. Not that part.

Watson: So . . . ?

Olson: Yes, I want to keep it away from his property.

Watson: So then you are going to move it? Thirty . . . ?

Olson: Yeah.

Watson: Thirty-some-odd foot south of the . . . ?

Thieroff: Elizabeth, could you put up the, um, the second page of that packet? I'm sorry. Commissioner Watson, the, the area labelled here Alternative Two is the same as the right-of-way depicted on the larger document you were just looking at. And it's 66 feet wide. The driveway needs to be 16 feet wide, so we're proposing it to put it at the southern edge, inside this area. So there would be 50 feet between the boundary and the driveway. So, that was what was meant by moving it away from Mr. Hoffman's property. And then the tree cover, that 50-foot strip, between the driveway and the boundary, all the trees that are in there would stay.

Watson: Okay. Um, my other question, and, forgive me for my simplicity, but, when I look at this map, and its topography, should 15, 20 years down the road—many Councils from now—what's to say that they're not going to end up having to entertain a motion to put, for it to split that easterly lot?

Mursko: Do you want that up on the screen?

Watson: Would you please, ma'am?

Watson: A nice piece of property.

Olson: Thank you.

Watson: Um, to the right you can see kind of a great big circle there. That being the high ground. Uh, currently that'd end up being about ten acres. Should the City ever move to five acres or two and half, I see a line being drawn right down the center of that, with a second property moved just to the west. With what's being said today, what assurances are we going to have that that's not going to be the case?

Olson: Well, we can't do the 66-foot wide, so there couldn't be a public road, and, if I understand correctly, we can only have two properties on that single driveway.

Watson: Today.

Olson: Today. I don't know what the City will do into the future.

Watson: Well, and, again, forgive me, I'm no lawyer, but looking at a document that says that there won't be improvement without agreement between the two parties, and then seeing this, there's a potential for down the road. I see, I see issues coming forward for Councils in the future, with this property.

Thieroff: Well, there would certainly be ways for, for the City to condition its current approval on that not occurring. And your attorney can advise you on different ways of doing that. But, that would certainly be within your authority, to kind of lock things down the way they are.

Steen: Certainly. At some point we will need to amend the subdivision agreement and, uh, it could be incorporated at that time--the location of, and further subdivision, uh, those provisions. That being said, there's already a provision in the subdivision agreement that says that. So, to your point, there's no reason it couldn't be amended at, at a later date. I mean, ultimately, in 20 years the Council could do very different things; Columbus could look very different, and this could be amended. So, there is, there's always a potential to, to change that in the future. If you are concerned with doing what you can to the extent possible, you could certainly recommend approval of a, you know, an amendment to that subdivision agreement or, at a later date, you know, I don't know. That'll most likely occur at, at the subdivision or the planning period though at this point, I think. But, you're absolutely correct, there's always changes that could be made in the future.

Wolowski: Mr. Chair.

Sternberg: Yeah.

Wolowski: Are you basically . . . what you're just bringing forward is a mimic of what we are addressing today. Correct?

Watson: Dealing with today.

Wolowski: Okay. Just want to make sure I understand that. So, again, just reiterating, like you were saying, I'm not a genius on this, but, um, the fact that what we're going through right now, you're, even if we put that amendment in there, we're still back to what we're doing right now, in the future, maybe future Councils. Is that correct?

Watson: That's my assumption.

Wolowski: And that is what you are reiterating for us?

Steen: That's correct. You know, presumably—and, I wasn't there when it was originally approved—but, presumably that was the intent, and that subdivision was, subdivision agreement was put into place, uh, to ensure that this wouldn't happen.

Wolowski: Correct. Okay.

Sternberg: Any other questions?

Wolowski: I have one more.

Sternberg: Go ahead.

Wolowski: Have, um, did you and Mr. Hoffman ever have conversations on--just as neighbors—on, um, what might be a good idea to get this moving forward? You know, as two neighbors just working together, so, avoiding attorneys and litigation and all those things? Have you had conversations in the past with Mr. Hoffman on, you know, 'Hey, what can we do to make this happen?'

Olson: Um, when I first came to Columbus, they said that everything looked good, and, I, there were things that I needed to do before I could get an access. So we were working on if it was even possible. Um, and Mr. Hoffman did come over to my place. I told him at the time that I was unsure, and that, um, as things progressed, if it looked like a possibility or a doable thing, that I would talk to him about it. But, um, for some reason Mr. Hoffman hired a lawyer right away. And so, I kind of just stepped back.

Wolowski: So, you had a conversation with him recently?

Olson: Not recently. This is, because we've been doing this for like five, six years.

Wolowski: Okay.

Olson: I mean, it's been a really long process.

Wolowski: So, five, six years ago, you had a conversation with Mr. Hoffman?

Olson: Um, it could have been four; I guess I'm unsure. But it's been a little bit ago. And since he involved a lawyer in, on this, before if I even could assess if it was possible, I felt it best just to step back.

Wolowski: Okay.

Thieroff: On Ms. Olson's behalf, I reached out to Mr. Hoffman's previous attorney right after I got involved last year, to see if we could talk about, you know, some practical solutions here, and he candidly told me that Mr. Hoffman had no interest in seeing the project happen at all. So there was no interest in discussing practicalities or anything like that.

Wolowski: So no neighbor-to-neighbor kind of, you know, 'Hey, how can we make this work?''? It just right away went to litiga—or to attorneys. Is that my understanding then?

Olson: Yes. Mr. Hoffman hired an attorney right away, and, yes . . .

Wolowski: Was there actions on your behalf that, uh, other than a conversation, that would have prompted him to hire an attorney?

Olson: Not that I'm aware of. I don't really associate with Mr. Hoffman a lot.

Wolowski: Okay. Thank you.

Krebs: I do have one question, Mr. Chair. On the Alternative One driveway, can you, uh, go into a little more detail as to why that wasn't still considered as an option?

Thieroff: Uh, I can, Um, I don't have the number in front of me; I can maybe look it up after we're done, and, and tell you afterwards. I think I may have it in my file. The, um, the amount of fill that was necessary with Alternative One was, uh, by a factor of, you know, three or four or five times greater than Alternatives Two and Three, which are quite similar in terms of amount of fill. Um, it, it, we just wouldn't have been able to get a replacement plan approval for it, because she had alternatives that would require far less fill.

Krebs: But the watershed or the wetlands wouldn't have prohibited it being put in there regardless to the amount of fill – that wasn't the deterrent?

Thieroff: Well, they would. We haven't, we haven't completed the process, because the watershed district wants the access issue resolved first, but as, as you probably know, there's what they call sequencing in the, the approval process with the watershed district. And one of the things that they require the property owner to show is that there are no alternatives that would, uh, require less wetland fill, than what they're being asked to approve. Um, and we couldn't do that with Alternative One, because it had far, far more fill necessary than alternatives two and three.

Krebs: Okay. Thank you.

Mursko: But to, but to Commissioner Krebs' point, I think, I think where she was kind of going is that maybe you could, you know, have an alternative where—and I'm not saying that they're going to go in this direction, but perhaps you could have a shared driveway concept, eliminate the fill, and the alternative, um, rare species plantings . . . If you had a shared driveway, because there would no, not be the need to build the driveway through the first wetland, and then go north of the plant communities, so that you're way south of Mr. Hoffman's property, is maybe an Alternative Four.

Thieroff: I've not seen this before; I don't know who prepared this, so I don't know what it would require in terms of fill and so forth. We haven't had that looked at. Where's this from? (referring to drawing).

Mursko: Um, this is my scribbles.

(laughter)

Mursko: So, I guess my, my, where I'm going here is, I am familiar with sequencing and alternatives. This—and we have a new ordinance that we do allow shared driveways. This diagram here is showing that the shared driveway through here, and avoiding your wetland fill of the northerly side, also your rare species, and then going westerly, which is what your Alternative Three shows, and going north of your rare species, um, which is the same amount of fill that you would have. So, again, I think what, um, Commissioner Krebs is saying is, maybe there's an alternate alternate to Number Three, using some, some other measures.

Sternberg: Any other questions?

Preiner: Mr. Chair. Elizabeth, would you put up the first page again, please?

Mursko: Page one?

Preiner: Yup, I think. So, the bottom of the screen is south, correct?

Mursko: Yes.

Preiner: Okay. Is there any other access available off of any streets besides 145th? Like . . .?

Sternberg: South?

Preiner: South. Or north. Where you could buy access from another landowner or another . . .? Because--

Mursko: To, to answer your question, 141st is the, is the next road, um, that is southerly. You know what I mean? So this is what . . . What you're, um, right now, the properties are off of 145th.

Preiner: Correct.

Mursko: And, uh, unfortunately, the only map I have is one where the (unintelligible). But . . .

Preiner: And, what I'm thinking is, you know, as a Council, we're not allowed to take financial issues into consideration. So, it doesn't matter if the wetland fill is five-hundred feet or a thousand feet. But is there a shorter or a better route without going through wetlands, to be considered?

Mursko: So, so, um, Commissioner Preiner, you have, we have the two lots here that we're showing on the screen. There's a 40 that is south of this. And then that 40 has road frontage on 141st.

Preiner: And is there high land on there where the, a driveway could be, access could be purchased or is that just all wetland on that 40?

Mursko: Um, that 40 does have wetlands on it. Um, the 40 recently was evaluated, um, because they just improved the road on 141st. And so, we do know that, um, there are at least four buildable lots on the property. Or that potentially could be four buildable lots. Whether or not, you know, a road or a driveway or as such would be, be able to be done, there's no documentation to that.

Preiner: Okay. Thank you.

Sternberg: Any other questions?

Wolowski: No sir.

Sternberg: Any other questions? Okay, at this time, I'm going to open the hearing to the public again.

Thieroff: Thank you.

Sternberg: Thank you. Anyone?

Stevens: Good evening.

Sternberg: Good evening.

Stevens: My name is Vince Stevens. I am a lawyer for Jim Hoffman. I reside in Forest Lake, 9240 Jewel Lane, Forest Lake. Jim, you want to state your address?

Hoffman: Jim Hoffman, 6554 145th Avenue North East.

Sternberg: Thank you.

Stevens: Thank you. Commissioners, uh, the original owners to these properties, uh, were in this same situation back in the 1980s. The owner of a, the larger parcel wanted to split its parcel—her parcel, I believe—into two and allow a house in the back, the landlocked back 20 acres, which is now owned by Ms. Olson. The two property owners created a private easement, which you're well, now, by now well aware of. And, the township allowed one house on this landlocked parcel. But per the minutes from those meetings, and we, I've submitted those as one of my, uh, submissions. And I've read them. And, so, people just like yourselves, back in the 1980s were discussing this same thing, and they made it very clear what their intention was. And, uh, this is expressed in the subdivision agreement, uh, that was recorded as of record. You can go down and see it at the, uh, at the County. The Township was clear that it could not be further subdivided again without a public road. They said, 'No more houses back there; this is it. We'll give you one.' Now the applicant is asking to disregard this original deal, to expand the use of the easement, disregard the subdivision agreement that either, you know, they say amend or terminate, but, really, that's the impetus of this subdivision agreement. You might as well throw it in the garbage. And, more importantly, the reason why we're here on a variance request, they're seeking to completely ignore the ordinance amendments that were passed just last year -- not a long time ago -- last year, 2016. Mr. Hoffman, my client, purchased his property relying on this agreement that was recorded, prohibiting further subdivision or another house. Again, the applicant is seeking to disregard this agreement, ignore the ordinance, by running a second driveway, by my estimation, I think it's 97 feet from Mr. Hoffman's house. This is not fair to Mr. Hoffman. Is the City going to set a precedent for disregarding recorded subdivision agreements that residents or new home buyers regularly rely on? In other words, can the residents trust that the City's going to honor its agreements that they make? Counsel just, uh, previously indicated that Mr. Hoffman knew that the easement could be dedicated to the City for a public road. But that's not what's happening here. Uh, I do have one photo that I want to show the Commission. Actually, it's a blown-up version of what was already shown to the, to the Commission. Thank you, Elizabeth. This is the blown-up portion of the GIS or the photo, the aerial photo that was -- I don't know who takes these, if it's the County or the State.

Mursko: County.

Stevens: County? Um, and this is really a blown-up portion of what you already saw from the applicant. And this is a random photo at a random time. This is not Mr. Hoffman running out there when she has a party with a lot of cars out there. This is a random, any day, aerial photo. And what you will see is what these neighbors are talking about, and these circles are around various vehicles. And I count 12 vehicles. There might be something more up there that wasn't circled; I don't know what that is. But, here's 12 vehicles at this property on a random day. And this is what the, the neighbors are, are testifying to, saying, 'This is already a burden. To double this, potentially, is, is a major change, a major burden to the neighborhood.' So, let me talk about the 2016 ordinance amendments that were passed last year. Uh, these were pass—uh, adopted by the City Council, requiring that all lots taking, must take primary access from a public street, every dwelling must have access, uh, to it, in the RR district—residential, rural residential. An owner with no frontage may obtain a permit, uh, for one dwelling, if all the conditions are met. Here, basically none of the conditions are met-- uh, the major conditions. This is not a minor variance for, say, moving back a setback like five feet. The neighbors, as counsel noted, will not

agree to enter into a maintenance agreement, but, more than that, they will not agree to enter into a development agreement with the City. They will not agree to grant 66-foot easement to the public. They will not grant the drainage, utility or trail easements to the public that's required. They will not waive the right to future, uh, assessments, they will not agree to record this agreement on their titles—in fact, I think Mr. Hoffman's property is a Torrens prop—I'm not sure it can be recorded against it, but, nevertheless. Um, those are the items that cannot be overcome by this situation. And here's an important concept I want to make clear: the reason for this ordinance, these ordinance amendments last year, was to shift the problems caused by multiple parties using one driveway to those parties that want to use one driveway, uh, by requiring them to enter into these agreements. Here, all three owners of the properties to the north that are burdened by this, opposed this variance. So, they're losing that protection that was designed for them in the amendments. Again, the City held public hearings; they spent time and energy to amend these ordinances last year, but now they're being asked to disregard them. So let, let's talk a bit about variance law, because that's why we're here, that's what you need to make a decision on is: whether or not to grant the variance. They are granted for things, usually, like setbacks, height restrictions. Um, the critical language, the term of art, as they say, is practical difficulties. An applicant must show that there are practical difficulties warranting a variance. Here, the practical difficulties are that all neighbors are unwilling to sign the required agreements. And the City cannot make them. The ordinance absolutely requires these agreements. This is not the type of practical difficulty that we see or that can be fixed by a variance. Um, I'm not personally aware of any legal cases where a person has received a variance for this type of practical difficulty. Our position would be that the City would be overstepping its authority by granting a variance, and, and, therefore, we're asking for it to be denied. So let's look at the factors to consider for a variance. Commission's counsel did a very good job outlining them for you in a memo. You see that there's a, both in favor of approval and denial. So, the first factor is whether the owner's proposed use is reasonable. We're contending that it's not reasonable; it would—I want you to consider the excessive use of the one driveway already. See, see the photo that we submitted. Uh, the three neighbors attest that the use would be a burden to this area, and another property would simply add to it. Uh, keep in mind that Mr. Hoffman assumed that he could rely on the City's agreement in prior, in the prior decision that only one home could use this easement over his property. The next factor: the practical difficulty, uh, must, must be unique to this property. We would contend it's not unique to this property; it would apply to every property that wants to subdivide without access to a public road. This would apply to everyone who does not want to follow the zoning code. Also, this situation was created by the landowner. The applicant is the one who purchased these, this landlocked 20 acres subject to a 1986 agreement prohibiting future subdivision. Now she wants to subdivide. The applicant might not have the same ability to subdivide as an owner of 20 acres on a public road, but she has the same rights as any owner of a landlocked parcel. The next factor: Number three, 'The variance will alter the essential character of the area.' Every neighbor has testified that it will result in increased traffic and would create two driveways very close to Mr. Hoffman's house. This would double the density of the area. The next factor: Number four, 'The terms of the variance are' –we would contend are not consistent with the Comprehensive Plan. It defies the ordinances that were adopted just last year. Again, the City went through the trouble of the public hearings and adopting these two ordinances. The next factor: Number five, 'The variance is not in harmony with the zoning code.' And this is probably the most obvious

factor of any of these. I want you to pay close attention to this one. Last year's amendments intended to provide relief to owners seeking to subdivide property where the minimum standards were present and abutting property owners would agree to enter into an agreement governing the maintenance of a driveway. Approving the variance would further lower the standard and be inconsistent with the City code. This is, this is derived from the, your counsel's, uh, proposed findings if this were to be denied. Lastly, the practical difficulty relate—does relate to economic considerations; the creation of a second lot will have significant financial value for the applicant. Conversely, Mr. Hoffman contends this would devalue his property, notwithstanding counsel's opinion that it would not. Remember, the situation was created by the prior owners of the properties, the current owners were aware of it when they purchased, and they probably paid for their properties according to this mutual understanding. In other words, Mr. Hoffman probably paid more; the applicant probably paid less. Everybody understood there would only be one house back there. In conclusion, Mr. Hoffman believes that the applicant should have and could have attempted to address these access issues before investing money into this subdivision. He contends he was not consulted, and he can, he can elaborate on this if you'd like. But, he contends he was not consulted before he noticed survey stakes on the property. At that time, Mr. Olson, the applicant's—well, Mr. Olson, I don't know what the relation is—said that the subdivision was already in place and Mr. Hoffman could not stop it. Any disadvantageous situation that the applicant finds herself is due to her own actions. Now, counsel bemoaned that another alternative is not possible. Well, this presumes that she's entitled to this subdivision. She's not, per the subdivision agreement that was already recorded and the ordinance. Thank you, and if there are any questions either I or, uh, Mr. Hoffman will answer them.

Sternberg: Any questions? I think that's it. Thank you.

Stevens: Thank you.

Sternberg: Anyone else from the public want to speak?

Flohrs: Um, Miss, could you put that one back up that had your writing on it.

Mursko: Mine?

Flohrs: Yeah. That one. Thank you.

Sternberg: If you could . . .

Flohrs: Uh, Ted Flohrs, 6616 145th Avenue North East.

Sternberg: Thank you.

Flohrs: I have a lot of questions in my mind about what's really going on here. Number one thing is, uh, everybody that lives in Columbus has, as a property owner, has their rights. And to take Jim Hoffman's rights away to say no to a variance which, I believe is, is a Columbus

ordinance that you have to have the right of adjoining property to agree with the variance. But, uh, Jim's a very private man, and he's planted thousands of pine trees on his property to give himself his privacy. And here they're trying to take it away by building a road right next to his house. If you do decide to approve this, which I don't agree with, but, if you do, Liz's diagram is the only alternative that I can see that you would make it work. And to get that driveway away from Jim Hoffman's property. They've cut down hundreds of trees already to try and make their driveway in there. They were talking about trees and habitat and hawks and stuff. Hawks have nested right in the property right by my pond. So, by cutting down all them trees, that's taken away habitat too. So, I don't know if that can even, but if they have to fill in or buy land for wetland or whatever they have to do, you need to get it away from Mr. Hoffman, and, uh, give Jim his rights to say no to this, uh, variance. Thank you.

Sternberg: Thank you.

Wolowski: Thank you.

Sternberg: Anybody else?

Thieroff: (unintelligible)

Sternberg: Yeah.

Thieroff: Thank you Mr. Chair, I'll be very brief.

Sternberg: Sure.

Thieroff: A couple of points. Um, there's a suggestion that somehow variances are limited to things like setbacks. Um, counsel made the point much stronger last time. I think he told you that you couldn't grant a variance for something other than setbacks. I would encourage you, if you have questions about that to consult with your attorney. Um, a property owner can seek a variance from virtually any, uh, performance standard, dimensional requirement or anything, including the things that we're seeking a variance here for today. So, there's no legal impediment to granting the variance that we've asked for. Um, there's a reference to all three of the affected neighbors. Um, last time they brought a third individual, Mr. Lafond, with them. He lives far to the north. He's not an abutting landowner here, so, any idea that there's three people opposing this is simply incorrect. Um, most importantly, I would encourage you to, and ask you to focus on facts. And focus on documents in front of you, the lay of the land, and, and other such information. And, try not to be persuaded too much by, um, things like the suggestion that there's a lot of cars on the property. Uh, while we were listening to the description of the aerial photograph, I quickly asked my client what those cars were and she jotted down for me—she was able to account for 12 of them. One is her mother's, who lives with her. Two are hers. One is her son's, who lives at the house. One is a plow truck. Um, six are old, antique cars that her brother is working on, and, one is a camper. So, this suggestion that owning multiple vehicles makes you somehow less worthy for a variance or that you're a problem property is simply unsustainable. I mean, if there were a record here of, of calls to the sheriff for speeding or

something, that might be different, but this is just a neighbor who's got an axe to grind, and will tell you things that I would encourage you to take with a pinch of salt. For example, at the last meeting you were told that my client—my client, Ms. Olson—had said to Mr. Hoffman that it was too late, he couldn't do anything about it. And now we hear it's someone who's not even involved with this application, which is Ms. Olson's brother. So, um, let's focus on the facts, the legal issues in front of you, and try not to get, uh, persuaded by the tensions between these neighbors. Thank you.

Sternberg: Thank you. Anyone else from the public? Anyone else? I'm going to close the hearing.

At 7:53 p.m. the hearing was closed.

Respectfully Submitted:

Karen Boland, Recording Secretary